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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,961	01/20/2004	Michel Doucet	11348-0010-999	3887
20583	7590	09/27/2004	EXAMINER	
JONES DAY 222 EAST 41ST ST NEW YORK, NY 10017			PRICE, CARL D	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/761,961	Applicant(s) DOUCET ET AL.	
	Examiner CARL D. PRICE	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01/20/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/20/2004</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the bottom portion of the tubular element and the bottom end of the well being "flush with one another" (claims 2 and 12) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

### Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

*The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).*

**Claims 11-19, 21-30: rejected under 35 U.S.C. 102(b)**

Claims 11-19 and 21-30 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 04-356617.

JP 04-356617 shows and discloses a gas cigarette lighter comprising:

- a fuel reservoir (1) made of a plastic material;
- the reservoir having a top wall (not referenced);
- a well (not referenced; generally at 3) having a bottom end (not referenced; adjacent 12), the well passing through the top wall;
- a threaded ring (2);

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- the threaded ring being disposed within the well;
- a gas dispensing device including at least one tubular element (5,7) having a bottom portion (adjacent 12), the tubular element being fitted into the threaded ring; and
- a microporous membrane (9-11) and retaining ring (12) supported within the tubular element by a crimped end (not referenced) of the tubular element,
  - the membrane being received within the tubular element, wherein the bottom portion of the tubular element extends at least to the bottom end of the well;
- the bottom portion of the tubular element and the bottom end of the well are *substantially* flush with one another (claim 2), or the bottom portion of the tubular element extends beyond the bottom end of the well (claim3) (i.e. – in the same manner shown in applicant's figure 1);
- the threaded ring has a first opening (at 8) and a second opening (at 3), the tubular element passes through the first and second openings of the threaded ring;
- an annular sealing gasket (3) is disposed between the tubular element and the top wall;
- the top wall is provided with a radially extending rim (not referenced) against which the annular sealing gasket is held in abutment by the threaded ring;
- the tubular element is ring made of metal;
- the microporous membrane is held against an internal shoulder in the tubular element by being pressed against the retaining ring (12);

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- the tubular element having a bottom end crimped against the retaining ring adjacent 12);
- the reservoir includes a bowl (i.e. - chamber) having a top end bonded to the top wall;
- the reservoir is formed of a plastic material.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

*This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).*

**Claims 1-10, 20, 31: rejected under 35 U.S.C. 103(a)**

Claims 1-10, 20 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 04-356617 in view of JP 02-290270.

JP 04-356617 shows and discloses the invention substantially as set forth in the claims with possible exception to the lighter tank being made from rigid amorphous polymer material selected from at least one of the group consisting of ABSs and SANs.

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JP 02-290270 teaches, from the same fuel tank field of endeavor as JP 04-356617, made forming an aerosol container having gas barrier properties from a rigid amorphous acrylonitrile polymer material.

In regard to claims 1-10, 20 and 31, for the purpose of forming an aerosol container having gas barrier properties, it would have been obvious to a person having ordinary skill in the art to modify the container of JP 04-356617 to be made from a rigid amorphous acrylonitrile polymer material, in view of the teaching of JP 02-290270. Also, in regard to claims 10, 20 and 31, since the desired properties of the tank material would depend on numerous design concerns such as the type of fuel used, the size of the container, the relative sizes of each of the lighter components, etc., to form the container/tank of JP 04-356617 from ABS or SAN materials can be viewed as nothing more than a mere matter of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record.

### **Conclusion**

See the attached PTO FORM 892 for prior art made of record and not relied upon and which are considered pertinent to applicant's disclosure.

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**USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **CARL D. PRICE** whose telephone number is **703-308-1953**. The examiner can normally be reached on Monday through Friday between **6:30am-3:00pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on **703-308-1935**. The fax phone number for the organization where this application or proceeding is assigned is **703-872-9306**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the **Electronic Business Center (EBC)** at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Carl D. Price', with a stylized flourish at the end.

**CARL D. PRICE**  
**Primary Examiner**  
**Art Unit 3749**